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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

BERKELEY HOMELESS UNION.

Plaintiff,

v.

CITY OF BERKELEY, et al.

Defendants.

**Case No. 4:25-CV-04449**

**CITY OF BERKELEY'S RESPONSE TO  
STATEMENT ON OPPOSITION TO  
CITY'S MOTION TO DISMISS**

Judge: Hon. Haywood S. Gilliam, Jr.

Plaintiff Berkeley Homeless Union's ("BHU") Statement and Declaration of Anthony D. Prince Re Defendant's Motion to Dismiss ("Statement"), Dkt. No. 32, fails to adequately respond to the Court's August 19, 2025 Order directing BHU to show cause why the City of Berkeley's ("City") motion to dismiss should not be granted for failure to file a timely response, Dkt. No. 30. Since BHU has not articulated any valid basis for failing to respond to the City's motion to dismiss, that motion should be granted and the case dismissed with prejudice.

Pursuant to Rule 6 of the Federal Rules of Civil Procedure ("Rule"), after a deadline has passed a court may extend the time to act "if the party failed to act because of excusable neglect." Fed. R. Civ. P. 6(b)(1)(B). In the Ninth Circuit, the Supreme Court's analysis of "excusable" neglect in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993) is

1 applicable to Rule 6(b). *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997).  
 2 Because Congress has not specified what sorts of actions constitute excusable neglect, the Court's  
 3 “determination is at bottom an equitable one, taking account of all relevant circumstances  
 4 surrounding the party's omission.” *Pioneer*, 507 U.S. at 395. “Although not required to  
 5 specifically articulate the *Pioneer* standard, courts must at least engage with the equitable factors  
 6 identified in that case.”<sup>1</sup> *In re PG&E Corp.*, 651 B.R. 448, 453 (N.D. Cal. 2023).

7 The Supreme Court interprets “neglect” as “negligence.” *See Briones*, 116 F.3d at 381.  
 8 BHU’s Statement establishes a deliberate *choice* to ignore the filing deadline, and therefore there  
 9 is no negligence that can be excused. BHU does not claim ignorance of the deadline, nor does  
 10 BHU or its attorney assert any factors outside of their control that prevented them from timely  
 11 opposing the City’s motion to dismiss. Rather, BHU’s Statement evidences a strategic decision by  
 12 BHU’s counsel to ignore the deadline while prioritizing other matters. BHU does not explain why  
 13 it did not request a stipulation or file a motion to extend its filing deadline.

14 Not only should the Court grant the City’s motion to dismiss based on BHU’s non-  
 15 opposition, but it should do so with prejudice. For one, BHU has demonstrated a pattern of failing  
 16 to meet deadlines in this case. As the Court may recall, the parties stipulated to a briefing  
 17 schedule on BHU’s preliminary injunction motion whereby BHU committed to file its reply brief  
 18 on June 4, 2025. Dkt. No. 12 at 2. BHU’s brief was not filed until June 5, 2025. Dkt. No. 14.  
 19 Then, the Court ordered the parties to file simultaneous briefs on the issue of BHU’s entitlement  
 20 to a jury trial. Dkt. No. 21. The City complied and timely filed a brief on July 22, 2025. Dkt. No.  
 21 22. BHU never submitted a brief or any other response. *See* Dkt. No. 23 at 1. BHU’s failure to  
 22 timely oppose the City’s motion to dismiss is a “third strike” that warrants dismissal with  
 23 prejudice.

24 Moreover, BHU’s Statement admits that the encampment at issue in this case no longer  
 25 exists, and alludes to potential new claims that are “bound to appear again.” Dkt. No. 32 at 2.

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27 <sup>1</sup> “These include . . . the danger of prejudice to the debtor, the length of the delay and its potential  
 28 impact on judicial proceedings, the reason for the delay, including whether it was within the  
 reasonable control of the movant, and whether the movant acted in good faith.” *Pioneer*, 570 U.S.  
 at 395.

1 New claims must be raised in a new lawsuit, and so there is no reason to permit amendment of the  
2 operative Complaint.

3 Finally, even if the Court were to grant BHU permission to file a late opposition to the  
4 motion to dismiss (notwithstanding the prejudice to the City of granting BHU so much extra time  
5 for briefing), there would be no reason to continue the hearing. The hearing is set for October 23,  
6 2025, giving the Court ample time to receive and review opposition and reply briefs.

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8 Dated: August 28, 2025

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